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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3737 OF 2003
IN
SUIT NO.4261 OF 1998

Balkrishna Bapu Khadang).. Plaintiff

Versus

Ashabai Kashid).. Defendant

Mr.P.G. Karande with Mr.S.S. Redekar for the Plaintiff.

Mr.V.Y. Sanglikar for the Defendant.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 17TH MARCH 2006

P.C.:

. By this Motion, the Defendant seeks to modify the order dated 3rd August 1999 passed in Notice of Motion No.206 of 1999 appointing the Court Receiver for a portion of the shop premises situate at Shop No.4 on the ground floor of Shivaji Park House, Lady Jamshedji Road, Bombay 400 016. The Defendant was appointed as agent of the Court Receiver and was directed to pay Rs.7,000/- as royalty.

2. It is the case of the Defendant that her deceased husband had permitted the Plaintiff to run the business of the Hair Cutting Saloon under a conducting

agreement. After the death of her husband, the Defendant claims that the Plaintiff left the premises. The Plaintiff then filed a Suit in the City Civil Court in the year 1991,after which the Plaint was returned as the City Civil Court did not have the jurisdiction to entertain the Suit. The Defendant claims that the present Suit is filed after the return of the Plaint. She has been appointed as agent of the Court Receiver pursuant to the orders passed by this Court. The royalty of Rs.7,000/- per month is to be paid by her. It is her case that since she is the tenant of the suit property and the owner of the business, she should not be required to pay royalty in respect of the business premises.

3. Mr.Sanglikar, learned Advocate appearing for the Defendant, submits that the change in circumstances require that the Court Receiver should be discharged or in any event the Defendant should not be required to pay royalty at all. He submits that the Suit on title being Suit No.5274 of 2000 has been filed under Section 6(4) of the Specific Reliefs Act, 1963 by the Defendant. He submits that since that Suit is pending, it is necessary and in the interest of justice that the present order be modified and the Receiver be discharged or the Defendant should not be made to pay the royalty.

4. On the other hand, Mr.Karande appearing for the Plaintiff, submits that the Receiver was appointed and royalty fixed after hearing both the parties. The Defendant had in fact challenged the appointment of the Court Receiver and the royalty fixed in an Appeal which has been dismissed. In such circumstances, he submits that in the event the Defendant is not able to pay the royalty, the Plaintiff is willing to act as agent of the Court Receiver and pay royalty as fixed.

5. In my view, merely because a Suit for title has been filed by the Defendant being Suit No.5247 of 2000, it would not necessarily mean that the title has been established. Furthermore, once the Receiver has been appointed to protect the property, in my view, after the learned Single Judge and the Appeal Court have taken a view that Receiver should continue in respect of the business and the suit premises, there is no need to modify that order or to discharge the Court Receiver. The Defendant, who is acting as the agent of the Court Receiver, claims to be the owner of the suit premises. However, at this stage there is no, prima facie, document nor evidence nor material to show that she is in fact owner of the suit premises. In my view, the mere filing of the suit by the Defendant would not necessarily mean that the Receiver appointed in the present Suit should be discharged.

6. In my view, no case has been made out. Motion dismissed.